

# DC Tax Flash: IRS Issues New NOL Guidance for Consolidated Groups Under CARES Act

Tax Alert  
07.02.2020

The Internal Revenue Service (IRS) today issued [proposed](#) and [temporary regulations](#) that provide guidance for consolidated groups on net operating losses (NOLs) under the [Coronavirus Aid, Relief, and Economic Security \(CARES\) Act \(P.L. 116-136\)](#).

The temporary regulations "permit consolidated groups that acquire new members that were members of another consolidated group to elect in a year subsequent to the year of acquisition to waive all or part of the pre-acquisition portion of an extended carryback period under [section 172 of the Code](#) for certain losses attributable to the acquired members where there is a retroactive statutory extension of the NOL carryback period under section 172," the IRS explains. The rules reflect changes under [section 2303 of the CARES Act](#), which extended the carryback period for taxable years beginning after 2017 and before 2021.

The 28-page text of the temporary regulations is [posted here](#).

The proposed regulations revise, consolidate, and "re-propose certain sections of proposed regulations issued in prior notices of proposed rulemaking relating to the absorption of consolidated net operating loss carryovers and carrybacks," the IRS explains. The rules also update regulations "applicable to consolidated groups that include both life insurance companies and other companies to reflect statutory changes."

The 96-page text of the proposed regulations is [posted here](#).

The IRS issued the following [press release](#) announcing the new rules:

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## Treasury Department and IRS issue guidance for consolidated groups regarding net operating losses

**IR-2020-138, July 2, 2020**

**WASHINGTON** — The Department of the Treasury and the Internal Revenue Service today issued [proposed regulations](#) and [temporary regulations](#) that provide guidance for consolidated groups regarding net operating losses (NOLs).

The Tax Cuts and Jobs Act (TCJA) and the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) amended the rules for NOLs. After amendment, the NOL deduction is the sum of:

- The total of the NOLs arising before January 1, 2018 (pre-2018 NOLs) that are carried to that year; plus
- The lesser of:
  - The total of the NOLs arising after December 31, 2017; or
  - 80% of taxable income less pre-2018 NOLs (the 80% limitation).

The TCJA generally eliminated NOL carrybacks and permitted NOLs to be carried forward indefinitely. The TCJA also provides special rules for nonlife insurance companies and farming losses. Nonlife insurance companies are permitted to carry back NOLs two years and forward 20 years, and the 80% limitation does not apply. Farming losses are permitted to be carried back two years

and carried forward indefinitely, subject to the 80% limitation.

The CARES Act effectively delays the application of the TCJA amendments until January 1, 2021. Additionally, the CARES Act permits a five-year carryback for NOLs, including farming losses and NOLs of nonlife insurance companies, for taxable years beginning after December 31, 2017 and before January 1, 2021.

The proposed regulations provide guidance to consolidated groups on the application of the 80% limitation. Additionally, the proposed regulations would remove obsolete provisions from the rules for consolidated groups that contain both life insurance companies and nonlife insurance companies.

Because the CARES Act allows certain NOLs to be carried back five years, the temporary regulations allow certain acquiring consolidated groups to make an election to waive all or a portion of the pre-acquisition portion of the extended carryback period for certain losses attributable to certain acquired members.

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### **Miller & Chevalier Coronavirus Task Force**

The outbreak of COVID-19 is creating significant business and legal challenges for companies throughout the world. In response to client demand, the firm has formed an interdisciplinary task force to help businesses navigate these issues.

### **COVID-19 Resource Library**

We also maintain a resource library of [legislative responses](#) and [regulatory guidance](#) related to COVID-19.

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